

PCT

INTERNATIONAL PRELIMINARY EXAMINATION REPORT

(PCT Article 36 and Rule 70)

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Applicant's or agent's file reference 11035P3 WO/JM	FOR FURTHER ACTION See Notification of Transmittal of International Preliminary Examination Report (Form PCT/PEA/416)	
International application No. PCT/GB 03/03442	International filing date (day/month/year) 07.08.2003	Priority date (day/month/year) 29.08.2002
International Patent Classification (IPC) or both national classification and IPC B65D83/16		
Applicant RECKITT BENCKISER INC. et al.		



1. This international preliminary examination report has been prepared by this International Preliminary Examining Authority and is transmitted to the applicant according to Article 36.
2. This REPORT consists of a total of 6 sheets, including this cover sheet.

☒ This report is also accompanied by ANNEXES, i.e. sheets of the description, claims and/or drawings which have been amended and are the basis for this report and/or sheets containing rectifications made before this Authority (see Rule 70.16 and Section 607 of the Administrative Instructions under the PCT).

These annexes consist of a total of 2 sheets.

3. This report contains indications relating to the following items:

I	<input checked="" type="checkbox"/>	Basis of the opinion
II	<input type="checkbox"/>	Priority
III	<input checked="" type="checkbox"/>	Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
IV	<input type="checkbox"/>	Lack of unity of invention
V	<input checked="" type="checkbox"/>	Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
VI	<input type="checkbox"/>	Certain documents cited
VII	<input type="checkbox"/>	Certain defects in the international application
VIII	<input type="checkbox"/>	Certain observations on the international application

Date of submission of the demand 04.03.2004	Date of completion of this report 04.10.2004
Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized Officer Segerer, H Telephone No. +49 89 2399-8201 

**INTERNATIONAL PRELIMINARY
EXAMINATION REPORT**

International application No. PCT/GB 03/03442

I. Basis of the report

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this report as "originally filed" and are not annexed to this report since they do not contain amendments (Rules 70.16 and 70.17)*):

Description, Pages

1-4 as originally filed

Claims, Numbers

1-5 filed with telefax on 07.09.2004

Drawings, Sheets

1/4-4/4 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- ☐ the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
 - ☐ the language of publication of the international application (under Rule 48.3(b)).
 - ☐ the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).
3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:
- ☐ contained in the international application in written form.
 - ☐ filed together with the international application in computer readable form.
 - ☐ furnished subsequently to this Authority in written form.
 - ☐ furnished subsequently to this Authority in computer readable form.
 - ☐ The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
 - ☐ The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.
4. The amendments have resulted in the cancellation of:
- ☐ the description, pages:
 - ☐ the claims, Nos.:
 - ☐ the drawings, sheets:

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**INTERNATIONAL PRELIMINARY
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International application No. PCT/GB 03/03442

5. ☐ This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)).

(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been examined in respect of:

☐ the entire international application,

☒ claims Nos. 5

because:

☐ the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (specify):

☐ the description, claims or drawings (*indicate particular elements below*) or said claims Nos. are so unclear that no meaningful opinion could be formed (*specify*):

☐ the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

☒ no international search report has been established for the said claims Nos. 5

2. A meaningful international preliminary examination cannot be carried out due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

☐ the written form has not been furnished or does not comply with the Standard.

☐ the computer readable form has not been furnished or does not comply with the Standard.

V. Reasoned statement under Article 35(2) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

1. Statement

Novelty (N)	Yes: Claims	1-4
	No: Claims	
Inventive step (IS)	Yes: Claims	
	No: Claims	1-4
Industrial applicability (IA)	Yes: Claims	1-4
	No: Claims	

2. Citations and explanations

see separate sheet

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Re Item III

Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Claims defining "dies for molding an overcap" (cf. new claim 5) have not been present in the set of claims as originally filed and, thus, such dies for molding have not been searched. Consequently, the questions of novelty, inventive step or industrial applicability have not been examined in respect of claim 5 (non-establishment of opinion).

Re Item V

Reasoned statement with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement

V.1) Reference is made to the following documents:

- D1: US-A-3 269 614 (HENRY ABPLANALP ROBERT) 30 August 1966 (1966-08-30)
- D2: US-A-4 805 839 (MALEK EDWARD J) 21 February 1989 (1989-02-21) cited in the application
- D3: US-A-5 263 616 (ABPLANALP ROBERT H) 23 November 1993 (1993-11-23) cited in the application
- D4: PATENT ABSTRACTS OF JAPAN vol. 2000, no. 01, 31 January 2000 (2000-01-31) -& JP 11 278567 A (YOSHINO KOGYOSHO CO LTD), 12 October 1999 (1999-10-12)
- D5: US-A-5 335 832 (DE LAFORCADE VINCENT) 9 August 1994 (1994-08-09)

V.2) Claims 1-4 / Inventive Step (Article 33(3) PCT)

The present application does not meet the criteria of Article 33(1) PCT, because the subject-matter of present claim 1 with dependent claims 2-4 (being identical with claims 1-4 as originally filed) does not involve an inventive step in the sense of Article 33(3) PCT, the reasons being as follows:

- Independent claim 1: an "overcap" for an aerosol container comprising "a wall

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capable of being attached to the container" and a button having an orifice in the top and a tubular extension with cavity ("actuating means") which is adapted to "sealingly receive the free end of an aerosol valve stem having a ... bore" (in order to create a fluid communication for releasing a pressurized liquid to be atomized) is clearly known (cf. button-type actuator caps according to D1, figures or document D2 being already cited by the applicant). Moreover, the buttons according to D1 and D2 are attached to said cap wall via two hinges (pair of hinges), wherein the hinges according to D1, embodiment shown in fig. 5-7, are thin hinges which may twist and stretch (see D1, col.3, par.2-4 and figures 5-7 ref. 18) such that the cavity (socket ref.8) of the button (tab ref. 4) according to D1 adapts itself to the position of the valve stem upon actuation (co-axial movement of valve stem and button cavity along the central long axis of the cavity).

Since D1 discloses a dispensing opening located at the central axis of the button cavity being inclined and, thus, tilting the spray away from the central axis in order to protect the user (cf. D1, fig.5, ref.11), closest prior art document D1 discloses an "overcap" (for an aerosol container with actuating button following the movement of the aerosol valve stem without tilt action along the long axis of the button cavity) from which the subject-matter of claim 1 only differs in that the arrangement of the dispensing opening is such that the spray (atomized liquid) is caused "to be dispensed along ... (said) central long axis of the cavity (remark: the configuration of the hinges according to D1 already assures a dispensing along said central long axis) .

Since aerosol dispensers dispensing along the central long axis without any automatic protection for the user by a "tilt-action" for the spray are known (cf. e.g. D5, fig.2), a skilled person intending not to protect the user automatically or intending to clearly indicate the spray direction based on the longitudinal axis of the aerosol container (being the axis of the movement of valve stem and cavity), clearly would take into consideration to simplify the solution according to D1 (emb. figures 5-7), would replace the inclined orifice arrangement according to D1 by a straight orifice being coaxial with the tubular cavity (slight modification; design option) and would, thus, directly arrive at the solution claimed in claim 1 without the exercise of inventive skill (movement of button and dispensing along the axis of the button cavity).

Consequently, present claim 1 is not inventive in the sense of Article 33(3) PCT.

- **Claims 2-4** being dependent on claim 1 are covered by said slight modification of D1

(cf. claim 2 claiming two hinges or claim 4 claiming torsion hinges; remark: torsion hinges as such are also disclosed by D3) or refer to a further suggested modification in order to solve a separate problem (cf. claim 3 claiming three hinges being suggested by D4, fig.2, e.g. in order to stabilize the substantially linear movement of the button according to D1).

V.3) Further Comments:

- the claims should have been provided with reference signs (Rule 6.2(b) PCT) and should have been in the two-part form (Rule 6.3(b) PCT);
- unclear references to elements which are not defined should have been avoided (cf. claim 1, term "said body");
- at least document D1 should have been cited in addition to cited documents D2 and D3 (Rule 5.1(a)(ii) PCT).

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